IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 735 OF 2005

Banwari Algu Yadav .. Appellant

Vs.

Vishwa Co-op.Hsg. Society
Limited (Proposed) and ors. .. Respondents

Mr. S.S. Redekar for appellant.
Mr. Bharat Chaudhari with Ms. Lata Wadhawani for Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : August 02, 2005.

P.C.:

1. Heard Mr. Redekar, the learned counsel for the appellant who had taken out Notice of Motion No.1516 of 2005 in the pending S.C. Suit No.1825 of 2005. The learned judge of the City Civil Court at Mumbai was pleased to reject the said Notice of Motion by the impugned order dated 10-6-2005. The plaintiff had prayed for directions restraining the defendants from selling, transferring or parting with possession or creating third party right in shop no.10 admeasuring 315.46 sq.ft. in the newly constructed building of the defendants.

2. This court in Writ Petition No.6037 of 2004 has dealt with the petitioner's prayer for additional commercial premises. While dismissing the said writ petition vide order dated 28th July 2004 this court clearly observed that the appellant-plaintiff was not entitled to for allotment of commercial premises under Clause No.5.3 of the relevant regulations in the existing buildings. The learned counsel for the petitioner had stated that other buildings were likely to come up and in such building his prayer could be considered. The learned counsel for the builder had clearly stated that it was not possible to give any assurance in that behalf but if any accommodation became available in the building yet to be constructed, the request of the petitioner will be considered. It appears that based on this statement made by the learned counsel for the respondent-builder fresh Notice of Motion was taken out in the pending suit. Such a statement does not create a right in favour of the plaintiff for seeking orders from the trial court. Even if it is a preferential right, the

issue was required to be considered by the respondent-builder. Having regards to the order passed by this court on 28th July, 2004 in Writ Petition No.6037 of 2004, the reasoning set out by the trial court in support of the impugned order cannot be termed as illegal or perverse on any count. The appeal must, therefore, fail and the same is hereby dismissed in limine.

(B.H. Marlapalle,J.)